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**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term

No.

MIGUEL A. GARGALLO, Petitioner

v.

**FRANKLIN COUNTY COURT OF
COMMON PLEAS, DOMESTIC RELATIONS,
ET AL.**, Respondents

**BRIEF IN OPPOSITION
BY RESPONDENT BRADLEY
FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CHARLES E. BRANT
250 East Broad Street
Columbus, Ohio 43215
(614) 221-2121

Attorney for Respondent
Philip R. Bradley

**IN THE
SUPREME COURT OF THE UNITED STATES**

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v.

**FRANKLIN COUNTY COURT OF COMMON
PLEAS, DOMESTIC RELATIONS,
ET AL., Respondents**

**THE PETITION FOR A WRIT OF
CERTIORARI SHOULD BE DENIED**

Petitioner premises his petition for a Writ of Certiorari upon conflicting Circuit Court decisions; to wit, the matter **sub judice** from the Sixth Circuit Court of Appeals and **Cole v. Cole**, 633 F. 2d 1083 (4th Cir., 1980). S. Ct. R. 17. 1a. The cases are readily distinguishable; there is no conflict.

Cole is a 1980 case in which a Georgia resident brought suit in a United States District Court against his former spouse, a North Carolina resident, and two North Carolina law enforcement officers. The complaint, alleging malicious prosecution, abuse of process, arson, conversion, and conspiracy, asserted subject matter jurisdiction premised upon diversity of citizenship, 28 U.S.C. §1332 and violation of plaintiff's civil rights, 42 U.S.C. §1343. **Cole**, at 1084-5. The district court dismissed the claims pertinent to that plaintiff's former wife for want of subject matter jurisdiction (claims 1 and 2) and the failure to state a claim upon which relief could be granted (claim 3). The fourth and last claim, which was the civil rights claim, did not address the former wife.

Upon review, the circuit court discussed the general principle that "Congress had not given the federal courts original diversity jurisdiction over domestic relations cases". **Cole**, at 1087. This principle is of long standing. **Ex rel Burris**, 136 U.S. 586 (1890). The circuit court, upon concluding its review regarding original federal jurisdiction addressing domestic matters within the purview of the state courts, concluded that **Cole** did not present any true domestic claims. Although plaintiff had been married to one of the defendants, the "duty to abstain from malicious prosecution, from abuse of process, from arson, and from conversion does not arise out of or require, in order to give rise to the duty, a present or prior family relation". **Cole**, at 1088. The circuit court reversed stating original federal subject matter jurisdiction existed against the plaintiff's former spouse upon the non-domestic claims pursuant to diversity of citizenship.

In the case at bar, the district court, as did the court in **Cole**, sifted "through the claims of the complaint to determine the true character of the dispute to be adjudicated". **Firestone v. The Cleveland Trust Company**, 654 F. 2d 1212, 1215 (6th Cir., 1981). Unlike **Cole**, the present action is not premised upon diversity jurisdiction regarding non-domestic causes of action.

Couched in terms of a civil rights complaint, Petitioner recounts, in his complaint, matters involving his divorce.

Even when brought under the guise of a federal question action, a suit whose substance is domestic relations will not be entertained in a federal court. **Firestone**, at 1215.

Such is Petitioner's present action. Petitioner twice attempted to relitigate his divorce in the federal courts. **Gargallo v. Gargallo**, 487 F. 2d 914 (6th Cir., 1973) and **Gargallo v. Gargallo**, 472 F. 2d 1219 (6th Cir.), **cert. den.**, 414 U.S. 805 (1973). Petitioner was instructed to resolve his matrimonial claims in the state courts; the federal courts lacked jurisdiction.

With two difficult lessons in federal jurisdiction, Petitioner has learned he cannot use the front doors of the federal courthouse to relitigate his domestic case. With the present action, Petitioner still attempts to relitigate his domestic quarrels in federal court by entering through the back door with this collateral attack on his state divorce proceedings. However, as has been demonstrated, domestic cases may not be entertained in federal court even under the guise of a federal question. The substance of Petitioner's complaint is domestic. The courts below perceived this fact through the veil of the civil rights dressing.

It is apparent that plaintiff wishes to re-litigate his state divorce proceedings in the present action. The broad conclusory assertion that plaintiff was subjected to discrimination because he was a man does not save the complaint. This complaint essentially concerns a domestic relations dispute and consequently this Court lacks subject matter jurisdiction over the action. **Firestone v. The Cleveland Trust Company, supra.**

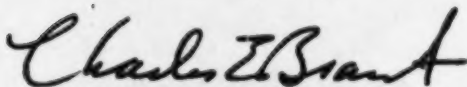
Gargallo v. Franklin County Court of Common Pleas, et al., No. C-2-79-483.

Cole and the opinions below herein are consistent. The true nature of the claims must be evaluated. These courts both performed the same analysis. In **Cole**, diversity jurisdiction concerning non-domestic claims against a former spouse on matters, at most, incidental to the marriage is permissible. Actions which are essentially domestic, as is this action, cannot be heard in federal court for a want of subject matter jurisdiction. The Fourth and Sixth Circuits are not in conflict, but rather, are in harmony.

CONCLUSION

For the foregoing reasons, Petitioner's Petition For A Writ Of Certiorari in the instant matter should be denied.

Respectfully submitted,

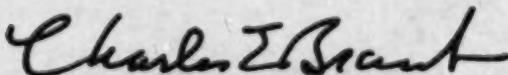


CHARLES E. BRANT
250 East Broad Street
Columbus, Ohio 43215
(614) 221-2121

Attorney for Respondent
Philip R. Bradley

CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing were served upon Miguel A. Gargallo, Plaintiff-Petitioner, Pro Se. P.O. Box 02177, Columbus, Ohio 43202; James R. Kirk, Assistant Prosecuting Attorney, Franklin County Hall of Justice, 369 South High Street, Columbus, Ohio 43215; Douglas W. Vanscoy, Senior Assistant City Attorney, 90 West Broad Street, Columbus, Ohio 43215; Robert N. Wistner, 50 West Bridge Street, Dublin, Ohio 43017; Thomas M. Tyack, 536 South High Street, Columbus, Ohio 43215; and William L. Millard, 155 East Broad Street, Columbus, Ohio 43215, by ordinary mail this 15 day of February, 1984.



CHARLES E. BRANT
Attorney for Respondent
Philip R. Bradley

TABLE OF AUTHORITIES

Cases:

Cole v. Cole, 633 F. 2d 1083 (4th Cir., 1980).....1, 2, 3

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Statutes:

28 U.S.C. §1332.....1

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